Supreme Court, U.S.
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No. 00-1623

IN THE

Supreme Court of the United States

DAVID S. FORBES, *ET AL.*,

Petitioners,

—v.—

R. ALAN EAGLESON, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL A. CARDOZO
(Counsel of Record)
STEVEN C. KRANE
PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036
(212) 969-3000

SHEPARD GOLDFEIN
SKADDEN ARPS SLATE
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000

Attorneys for NHL Respondents

28 pp

QUESTION PRESENTED

When a defendant in a RICO case moves for summary judgment on statute of limitations grounds, are the plaintiffs entitled to toll the running of the limitations period because of the defendants' fraudulent concealment if there is undisputed evidence that the plaintiffs had all of the facts they needed to file suit in a timely manner?

LIST OF PARTIES

The following named respondents, on whose behalf this opposition is being filed, are referred to collectively herein as the "NHL Respondents:"

The National Hockey League; Philadelphia Flyers Limited Partnership; Boston Professional Hockey Association, Inc; Niagara Frontier Hockey, L.P.; Calgary Flames Limited Partnership; Chicago Blackhawk Hockey Team, Inc.; Dallas Hockey Club, Inc.; Detroit Red Wings, Inc.; Edmonton Oilers Hockey Corp.; KTR Hockey Limited Partnership; LAK Acquisition Corp.; Le Club de Hockey Canadien, Inc.; Meadowlanders, Inc.; New York Islanders Hockey Club, L.P.; Rangers Hockey Club, a division of Madison Square Garden Center, Inc.; Pittsburgh Hockey Associates; Comsat Entertainment Group, Inc., a subsidiary of Comsat Corporation; St. Louis Blues Hockey Club, L.P.; San Jose Sharks Corp.; Maples Leaf Gardens, Limited; Vancouver Hockey Club, Ltd.; Washington Hockey Limited Partnership; Jets Hockey Ventures, (a Limited Partnership); John Ziegler; William W. Wirtz; Colorado Avalanche LLC.

CORPORATE DISCLOSURE STATEMENT

The NHL Respondents jointly make the following disclosures in accordance with Supreme Court Rule 29.6*:

AOL Time Warner, Inc.
AT&T Corp.
Boca Resorts, Inc.
Cablevision Systems Corporation
Comcast Corporation
Fox Entertainment Group, Inc.
Gaylord Entertainment Company
General Electric Company
Molson, Inc.
News Corporation
Toronto Dominion Bank
Walt Disney Company

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* The publicly held companies listed above hold a direct or indirect interest in an NHL Member Club, although they do not necessarily hold 10% or more of a party's stock. In addition, these companies may have a financial interest in the outcome of the litigation.

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NHL RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Third Circuit, after conducting its own *de novo* review of an extensive summary judgment record, rejected petitioners' claim of fraudulent concealment, concluding that the "unmistakable historical facts demonstrate that the plaintiffs were aware or should have been aware of the facts supporting their [RICO] claim long before" the statute of limitations began to run. (33a[1]) Contrary to petitioners' contention, the court below did not reach this result based on a finding that the record merely raised "suspicions of wrongdoing." (Pet. at 2.) Rather, consistent with the standards applied on summary judgment in every other circuit, the court concluded that, since "there was nothing obscure about the actionable conduct here" (33a), petitioners "either knew or should have known the facts supporting their course [sic] of action well prior to four years before they brought this case" (32a).

Rather than presenting a conflict among the circuits, this case reflects, at most, petitioners' disagreement with the Third Circuit's evaluation of the record under hornbook summary judgment principles. The petition should therefore be denied.

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[1] Citations in the form "___a" refer to the appendix to the petition in this Court. Citations in the form "A___" refer to the Joint Appendix filed on appeal to the Court of Appeals for the Third Circuit.

COUNTER-STATEMENT OF THE CASE

A. Introduction

Petitioners, on behalf of themselves and a purported class (that was never certified) of more than 1,000 former professional hockey players, commenced this suit in November 1995. Petitioners sought treble damages arising out of an alleged racketeering conspiracy that they claimed began in the 1970s and continued for nearly two decades. According to the petitioners, the leader of their labor union routinely stole union money and otherwise used various positions of power to profit personally at the expense of the union membership. Petitioners' employers, they contended, knew of but acquiesced in this wrongful activity because it resulted in collective bargaining agreements favorable to them.

Whatever this alleged conspiracy may have been, however, it was not a secret. The accusations were the subject of, among other things, a 1984 article in *Sports Illustrated*, one of the most widely read magazines in the country, and a lengthy report issued in the summer of 1989 by a sports labor lawyer specifically hired by union members to investigate possible wrongdoing by their leader. Moreover, the accusations of the 1995 complaint in this action can actually be found – virtually *in haec verba* – in a pleading filed more than four years earlier with an administrative tribunal in Canada.

When the petitioners finally commenced this action, they chose the Third Circuit as their venue concededly to

benefit from what was then the most permissive accrual rule for civil RICO claims in the country.[2] After that accrual rule was overturned in *Klehr v. A. O. Smith Corp.*, 521 U.S. 179 (1997), the district court granted summary judgment dismissing most of the complaint as time-barred.[3] (36a *et seq.*)

The Third Circuit, with the further benefit of *Rotella v. Wood*, 528 U.S. 549 (2000), which rejected the "injury plus pattern discovery" rule – the rule that had been adopted by the Third Circuit after *Klehr* and applied by the district court in this case – affirmed. (2a *et seq.*)

Recognizing that their claims would be time-barred regardless of which of the two remaining civil RICO accrual standards is ultimately adopted by this Court,[4] petitioners now

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[2] Under the then-applicable rule in the Third Circuit, the RICO limitations period extended beyond the point of discovery of injury, or even discovery of all elements of the RICO claim, for so long as "further predicate acts occur which are part of the same pattern," in which case "the accrual period shall run from the time when the plaintiff knew or should have known of the last injury or the last predicate act which is part of the same pattern of racketeering activity." *Keystone Insurance Co. v. Houghton*, 863 F.2d 1125, 1126 (3d Cir. 1988).

[3] The district court had initially denied a 1996 motion to dismiss under the constraint of *Keystone*. *Forbes v. Eagleson*, 1996 WL 420829, at *4 (E.D. Pa. July 23, 1996).

[4] In *Rotella*, this Court stated that it would eventually choose one of two accrual rules: (1) an "injury discovery" rule, or (2) an "injury occurrence" rule under which knowledge of injury would be irrelevant. *Rotella v. Wood*, 528 U.S. 549, 554 & n.2 (2000).

focus exclusively on their contention, rejected by both courts below, that the statute of limitations should be tolled because of "fraudulent concealment" on the part of the respondents.

B. The Complaint

Petitioners contended that the NHL Respondents, in order to provide Eagleson with personal monetary benefits, gave him unsupervised control over a variety of international hockey tournaments and allowed him the authority to select and place insurance coverage for NHL players. Petitioners alleged that the NHL Respondents did this "for the purpose of obtaining and exercising control and influence over Eagleson and the NHLPA to grant concessions in connection with collective bargaining, individual players' compensation, and other rights of players" during the time Eagleson served as the NHLPA's Executive Director. (A62) Petitioners claimed injury from these acts, alleging that they would have received additional salary and benefits had Eagleson conducted himself properly during collective bargaining.

C. The 1984 *Sports Illustrated* Article

A 1984 *Sports Illustrated* article entitled "The Man Who Rules Hockey" (A158-69) noted the relatively modest salary increases of NHL players over the preceding decade. According to the Third Circuit (13a-14a), the article charged that Eagleson (1) "in his capacity as executive director of the NHLPA . . . abused his positions as chief negotiator for Hockey Canada"; (2) "had numerous conflicts of interest in his

[various] capacities"; (3) "engaged in acts of self-dealing"; (4) "may have failed properly to represent NHL players in collective bargaining"; and (5) "improperly diverted international hockey funds to his private businesses." (*See also* 51a-56a (district court's extensive findings with respect to the article).)

D. The 1989 Garvey Report

The apparent widespread belief among NHLPA members that Eagleson had for many years engaged in extensive misconduct damaging to the players prompted them to commission attorney Edward Garvey (now co-counsel to petitioners in this action) to conduct an in-depth evaluation of Eagleson's activities. In the summer of 1989, more than 6½ years prior to the commencement of this action, Garvey issued a lengthy and detailed report (the "Garvey Report") (A103-57) that echoed and expanded upon the allegations first made public in the *Sports Illustrated* article. The essence of the Garvey Report was that Eagleson's loyalty had in effect been purchased by the NHL in exchange for Eagleson's right to divert revenues from international hockey tournaments to his own personal benefit. The Garvey Report told the players that, in exchange, Eagleson had made unwarranted concessions in bargaining that resulted in artificially depressed player compensation and benefits. According to the 1989 Garvey Report, "the conflicts of interest are shocking, but even more shocking is a *pattern of sweetheart agreements with the NHL* over all these years." (A109) (emphasis supplied).

E. The 1991 Alberta Complaint and News Reports

The allegations against Eagleson were also the subject of a June 1991 complaint filed by two NHL players with the Alberta Labour Relations Board. (A601-44) The complaint, filed by attorney Rich Winter – a co-author of the 1989 Garvey Report (*see* A103) – charged that Eagleson had been corrupted by the NHL which had permitted him to profit improperly from his role in international hockey. The 1991 Alberta complaint allegations bear a striking resemblance to those of the complaint in this case. Indeed, the Alberta Complaint sets forth in detail the very facts that petitioners here claim they could not have known until Eagleson's indictment three years later. (*Compare* Pet. at 11.)

In addition, a series of articles appeared in a major Boston-area newspaper in September 1991, two months before the limitations period began, reiterating that Eagleson was benefitting personally, and to the players' detriment, from his control of international hockey. (A646-78)

DECISIONS OF THE COURTS BELOW

A. The District Court Opinion

In August 1998, Judge Thomas O'Neill of the United States District Court for the Eastern District of Pennsylvania, in a carefully worded 50-page opinion, applying the "injury plus pattern" discovery rule then in effect in the Third Circuit (42a), held that petitioners' claims for injuries sustained prior

to November 7, 1991 were time-barred (94a). The court held that "by early 1991 at the latest all plaintiffs knew or should have known of allegations that Eagleson had serious conflicts of interest and inadequately represented the players, and all either had learned of or, in the exercise of reasonable diligence, should have inquired into the allegations in the Garvey and Sports Illustrated reports." (76a) Granting the NHL Respondents' motion for summary judgment, the district court concluded:

> Even the most cursory of perusals of any one of these three publications would have revealed to plaintiffs the gist of their claim: Eagleson was enriching himself by means of international hockey and the disability insurance and the NHL defendants knew so but apparently took no action to remove those opportunities from him. Moreover, examination of either the Sports Illustrated or [the 1991 newspaper articles] would have revealed almost every detail of the schemes plaintiffs now allege in their complaint, as well as sources to whom they could have gone for verification or further information.

(76a-77a) Addressing petitioners' fraudulent concealment argument, the district court concluded that "no reasonable jury could find that plaintiffs were mislead as to their cause of action so as to toll the statute of limitations." (94a)

B. The Third Circuit Opinion

The court of appeals, exercising plenary review on the appeal (23a), analyzed the factual record before it and concluded (28a):

> [B]y 1989 at the latest, plaintiffs were aware, or should have been aware, of the injury which they allege in Count I (reduced salary and benefits) and the source of the injury (the improper bargaining behavior by Eagleson). Under an injury discovery rule, nothing more was required to trigger the running of the four-year limitations period.

The court of appeals also rejected petitioners' contention that acts of fraudulent concealment excused their late filing of the complaint. It assumed without deciding that affirmative acts of concealment had occurred, and that the petitioners exercised reasonable diligence in an attempt to uncover the relevant facts. The court then turned to the remaining prong of fraudulent concealment: when plaintiffs had sufficient facts to plead their claim. The court observed (31a) that the test on summary judgment was "whether there is sufficient evidence to support a finding that plaintiffs were not aware, nor should they have been aware, of the facts supporting their claim" until after the statute of limitations would otherwise have accrued.

The court of appeals noted that while "*Rotella* indicated that 'where a pattern remains obscure in the face of a plaintiff's diligence in seeking to identify it, equitable tolling may be . . .' applicable, there was nothing obscure about the actionable conduct here." (33a (citation omitted)) Upon a *de novo* review of the record, the Third Circuit concluded that the "unmistakable historical facts demonstrate that the plaintiffs were aware or should have been aware of the facts supporting their Count I claim long before November 7, 1991." (*Id.*)[5]

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[5] The court of appeals further rejected the petitioners' contentions that they and their attorneys could not have signed a federal complaint consistent with their obligations under Fed. R. Civ. P. Rule 11 prior to November 7, 1991, agreeing with the district court that petitioners "'could have actually pled almost every allegation in their complaint' . . . based on the facts contained in the various publications available to them.'" (33a)

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

1. There is No Conflict Among the Circuits Warranting This Court's Intervention.

a. The Third Circuit Opinion

Petitioners erroneously argue that the Third Circuit, reviewing *de novo* the district court's grant of summary judgment, imposed *on them,* rather than on the NHL Respondents as moving parties, the burden of proving "that [petitioners] did not have enough knowledge to file suit before the statute of limitations would have otherwise expired." (Pet. at 14.) Petitioners accuse the Third Circuit of having erroneously drawn factual inferences to benefit the defendants, and of having placed a burden on plaintiffs "not just to offer evidence that could support a jury verdict, but to *prove,* indisputably, that they did not have enough knowledge to file suit before the statute of limitations would have otherwise expired." (*Id.*) (original emphasis).

The opinion below can be searched in vain for any such statements. Indeed, mindful of petitioners' criticisms of the procedures allegedly adopted in this regard by the district court,[6] the Third Circuit carefully articulated the paradigm it

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[6] (*See* 28a-29a) In the Third Circuit, petitioners devoted approximately 50 pages of their briefs to the fraudulent concealment argument.

intended to use for analysis of the NHL Respondents' entitlement to summary judgment in this case. Assuming, without deciding, that there was sufficient evidence to support a finding that respondents engaged in acts of fraudulent concealment and petitioners exercised reasonable diligence to discover their claim, the court of appeals wrote (31a):

> Thus, ordinarily when plaintiffs seek to demonstrate a case for equitable tolling, and defendants seek summary judgment on the issue, a court must determine . . . whether there is sufficient evidence to support a finding that plaintiffs were not aware, nor should they have been aware, of the facts supporting their claim until a time within the limitations period measured backwards from when the plaintiffs filed their complaint. Absent evidence to support these findings there is no genuine dispute of material fact on the issue . . . .

Upon an independent review of the record, the court concluded that petitioners had all the information they needed to bring suit long before the commencement of the limitations period, and therefore they could not avail themselves of the fraudulent concealment doctrine. (32a-33a)

The court had little difficulty rejecting petitioners' contention "that they lacked sufficient information until [Eagleson] was indicted to plead their RICO claim consistently with Fed. R. Civ. P. 11," because "the unmistakable historical

facts demonstrate that the plaintiffs were aware or should have been aware of the facts supporting their Count I claim long before November 7, 1991." (33a) Likewise, the Third Circuit found unpersuasive petitioners' argument that their delay should be excused because it took federal prosecutors until 1994 to obtain a criminal indictment against Eagleson (Pet. at 22), reasoning that "civil RICO cases are brought in situations in which it is hardly conceivable that there could be a criminal indictment." (35a)

The Third Circuit looked exclusively to the evidence introduced by the NHL Respondents and concluded *de novo*, as had the district court, that the NHL Respondents had demonstrated that the petitioners possessed sufficient information to plead Count I of their complaint long before November 7, 1991. Nothing in its opinion suggests that inferences were improperly drawn in favor of the NHL Respondents or that any burdens whatsoever were imposed on or shifted to the petitioners.

While petitioners may try to clothe their argument as an issue of law worthy of this Court's attention, their disagreement is really with the *weight* the Third Circuit gave to the evidence before it, including the *Sports Illustrated* article and the Garvey Report. These sources, petitioners urge, were only sufficient to trigger "suspicions" of wrongdoing by Eagleson, not knowledge. (Pet. at 9-13.) But the court of appeals did *not* say (Pet. at 22) that "a defendant can obtain summary judgment . . . by offering no more than a press report raising a suspicion of racketeering activity." Nor did the Third

Circuit rule as a matter of law that a civil RICO claim accrues when "a plaintiffs' suspicion of wrongdoing should have been aroused" (Pet. at ii). Rather, it merely used the word "suspicion" at one point of its opinion in describing a portion of the Garvey Report (15a). That does not derogate from the court's determination -- based on the entirety of the Garvey Report and the other evidence submitted by the NHL Respondents -- that the petitioners "knew or reasonably should have known the facts supporting their cause of action" prior to November 7, 1991.

b. The Other Circuits Are Not In Conflict.

Petitioners point to cases in four other circuits that they contend "explicitly set forth the rule that, on summary judgment, a moving defendant has the burden of demonstrating, by undisputed evidence, that a plaintiff had not merely suspicion, but also the facts needed to plead his claim, despite the defendant's fraudulent concealment." (Pet. at 14-15.) We agree that where there has been fraudulent concealment, the party seeking summary judgment on statute of limitations grounds must establish that the claimant knew or should have known the facts underlying the claim before the beginning of the limitations period. In fact, while their precise verbal formulations may differ, *every circuit* -- including the Third Circuit -- agrees and has applied essentially the same test.

For example, there is nothing in *Morton's Market, Inc. v. Gustafson's Dairy, Inc.*, 198 F.3d 823 (11th Cir. 1999), *cert.*

denied., 529 U.S. 1130 (2000), to support petitioners' contention that it "stands in direct conflict with the Third Circuit's ruling here." (Pet. at 17.) In that case, after describing the burden a plaintiff claiming fraudulent concealment would have to carry at trial, the Eleventh Circuit observed that:

> [o]n motion for summary judgment, however, the moving party always bears the initial burden of pointing out the undisputed facts which entitle it to judgment as a matter of law. To be entitled to judgment on this issue, then, the [defendant] Dairies must show that plaintiffs either knew of their claim or had notice sufficient to prompt them to investigate and that, had they done so diligently, they would have discovered the basis for their claims. If the Dairies point to such facts in the record, then plaintiffs must demonstrate that these facts are in dispute.

198 F.3d at 832 (internal citations omitted). This discussion of the trial burdens and applicable summary judgment standards is remarkably similar to that contained in the Third Circuit's opinion below. (31a) Summary judgment was ultimately denied to the defendants in *Morton's Market* because the information available to the plaintiffs did not provide them with a sufficient basis for their claims. Simply put, in contrast to the Third Circuit's conclusion here, the court in *Morton's Market* was not satisfied that the movants had submitted

sufficient evidence that the plaintiffs were on notice of their claims.

Likewise, the Fifth Circuit, in *Texas v. Allan Construction Company*, 851 F.2d 1526 (5th Cir. 1988), also featured by petitioners (Pet. at 17-18), held that a statute of limitations may be "tolled [for fraudulent concealment] only until such time as the plaintiff, exercising reasonable diligence, could have discovered the facts forming the basis for the claim." *Id.* at 1533. Actual knowledge of such facts is not required to start the clock running, according to the court, but inquiry notice will be sufficient if the plaintiff, through the exercise of reasonable diligence, would have been able to determine the facts. *Id.* There is simply no material difference between the legal standard established in *Allan Construction* and that discussed by the court below.

The related Seventh Circuit cases of *Law v. Medco Research, Inc.*, 113 F.3d 781 (7th Cir. 1997) and *Fujisawa Pharmaceutical Co. v. Kapoor*, 115 F.3d 1332 (7th Cir. 1997), discussed at length by petitioners (Pet. at 18-20), appear to have been selected for exposition because they both offer the view that a "mere suspicion" is insufficient in itself to trigger the commencement of the limitations period. *Law*, 113 F.3d at 785-86; *Fujisawa*, 115 F.3d at 1335. Notwithstanding those comments, the Seventh Circuit recognized that suspicious circumstances that are "sufficiently probative," *Fujisawa*, 115 F.3d at 1335, *i.e.*, that are coupled with "ease of discovering, without the use of legal process, whether the suspicion is well

grounded," will nevertheless end any limitations toll. *Law*, 113 F.3d at 786.[7]

Based on these authorities, petitioners urge that the Third Circuit erred by not requiring the NHL Respondents to produce evidence "that, prior to Eagleson's indictment, plaintiffs could have uncovered the facts needed to plead that Eagleson had been bribed by the owners." (Pet. at 22.) That contention, however, is fundamentally at odds with the plain language of the decision of the court below and its finding that "there was nothing obscure about the actionable conduct here." (33a) Indeed, the Third Circuit specifically concluded that petitioners "knew of sufficient facts to support their claim at least 6 years before they filed this case." (32a) The court continued (*id.*):

> In particular, they certainly knew of Eagleson's poor representation of them and that, with the cooperation of the NHL defendants, he was profiting from international hockey through use of the players' labors. Although it is true that Eagleson denied wrongdoing, nonetheless, his denials do not allow plaintiffs, who were

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[7] *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480 (D.C. Cir. 1989), referred to by petitioners (Pet. at 21), is no more persuasive. There, the court observed that in order to establish "notice" for statute of limitations purposes a defendant must show something more than "'the kind of notice -- based on hints, suspicions, hunches or rumors -- that requires a plaintiff to make inquiries in the exercise of due diligence,'" *id.* at 1494 (quoting *Hobson v. Wilson*, 737 F.2d 1, 35 (D.C. Cir. 1984)).

aware of their potential claim, to allege ignorance.

Thus, petitioners have failed to demonstrate that the approach of the four circuits highlighted in their brief is "fundamentally at odds with that of the Third Circuit." (Pet. at 21.) Contrary to petitioners' contention (*id.*), there is no reason to believe that the outcome of this case would have been any different had the rule in those circuits been followed. In fact, *every* circuit follows the standards articulated by the Third, Fifth, Seventh, Eleventh and District of Columbia Circuits, discussed above.[8]

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[8] *See, e.g., J. Geils Band Employee Benefit Plan v. Smith Barney Shearson, Inc.*, 76 F.3d 1245, 1252 (1st Cir. 1996) (summary judgment affirmed where documents in plaintiffs' possession "contained 'sufficient storm warnings,' which would have alerted them to the possibility of fraud had they acted with reasonable diligence"); *Stone v. Williams*, 970 F.2d 1043, 1049 (2d Cir. 1992) (ruling on summary judgment that the fraudulent concealment toll ended when plaintiff had sufficient knowledge of the relevant facts); *Weinberger v. Retail Credit Co.*, 498 F.2d 552 (4th Cir. 1974) (affirming summary judgment on statute of limitations grounds despite allegations of fraudulent concealment where plaintiff had the facts necessary to bring suit 14 years before commencing litigation); *Jarrett v. Kassel*, 972 F.2d 1415, 1424, 1428 (6th Cir. 1992) (summary judgment denied where plaintiffs had made a sufficient showing of due diligence; case remanded for consideration of other elements of fraudulent concealment defense); *Miles v. A.O. Smith Harvestore Products, Inc.*, 992 F.2d 813, 816-17 (8th Cir. 1993) (affirming summary judgment dismissing RICO claim on statute of limitations grounds despite allegations of fraudulent concealment where "the evidence leaves no room for a reasonable difference of opinion" as to plaintiffs' knowledge of the facts underlying her claim); *Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1417 (9th Cir. 1987) (affirming summary judgment dismissing claim on

Accordingly, there is no reason for this Court to grant this petition. While petitioners may quarrel with the court of appeals' assessment of the evidence before it, their efforts to establish the existence of a substantial legal question warranting this Court's review are unavailing.

2. There Are No Public Policy Reasons Warranting a Grant of Certiorari in this Case.

Despite petitioners' entreaties, there is nothing about this case that warrants this Court's intervention once again into the subject of RICO statutes of limitations. During the pendency of this litigation the Court has heard oral argument in no fewer than three cases directly addressing the accrual of civil RICO claims for statute of limitations purposes.[9] In two of those cases, *Grimmett* and *Klehr, amicus curiae* briefs were filed by the *Forbes* petitioners and the NHL Respondents. [10]

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statute of limitations ground and rejecting invocation of fraudulent concealment doctrine because documents in possession of plaintiffs made it clear they had overpaid for their investment); *King & King Enterprises v. Champlin Petroleum Co.*, 446 F. Supp. 906, 912-13 (E.D. Okla. 1978), *aff'd in part, rev'd in part on other grounds*, 657 F.2d 1147 (10th Cir. 1981) (affirming district court ruling that, as a matter of law, fraudulent concealment doctrine did not apply where plaintiffs knew of the facts underlying their claims prior to limitations period).

[9] *Grimmett v. Brown*, Docket No. 95-1723, *cert. dismissed as improvidently granted*, 519 U.S. 233 (1997); *Klehr v. A.O. Smith Corp.*, Docket No. 96-663; *Rotella v. Wood*, Docket No. 98-896.

[10] In *Grimmett v. Brown*: Brief *Amicus Curiae* of Plaintiffs' Executive Committee, MDL No. 1069 and David S. Forbes, filed August 15, 1996, 1996

Each time it has had the opportunity to do so, in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997) and *Rotella v. Wood*, 528 U.S. 549 (2000), this Court has tightened the rules governing the filing of civil RICO suits, making it more difficult for civil RICO plaintiffs to survive a statute of limitations defense. And each time this Court has done so, the Third Circuit – consistent with its history of relative permissiveness in this arena – has selected the most pro-plaintiff of the remaining accrual standards, thereby giving petitioners every benefit of the doubt throughout this litigation.

A careful reading of the Third Circuit's opinion shows that it applied the very standard petitioners contend it should have adopted, and thus the opinion is wholly consistent with those in other circuits. Petitioners' principal quarrel is plainly with the Third Circuit's interpretation and understanding of the factual record, not with any significant questions of law. That is not a sufficient reason for this Court to grant a writ of *certiorari*.

WL 470926; Brief of National Hockey League as *Amicus Curiae*, filed October 15, 1996, 1996 WL 595844; in *Klehr v. A.O. Smith & Co.*: Brief *Amicus Curiae* of Plaintiffs' Executive Committee, MDL No. 1069 and David S. Forbes, filed March 24, 1997, 1997 WL 106535; Brief of National Hockey League as *Amicus Curiae*, filed March 20, 1997, 1997 WL 126126.

CONCLUSION

The petition for a writ of *certiorari* should be denied.

Dated: May 24, 2001

Respectfully submitted,

MICHAEL A. CARDOZO
(Counsel of Record)
STEVEN C. KRANE
PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036
(212) 969-3000

SHEPARD GOLDFEIN
SKADDEN ARPS SLATE MEAGHER
& FLOM
Four Times Square
New York, New York 10036
(212) 735-3000